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Attorney Docket No. YOR920030422US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Applicant(s): H. Chen et al.
Docket No.: YOR920030422US1
Serial No.: 10/693,238
Filing Date: October 23, 2003
Group: 2157
Examiner: El Hadji Malick Sall

I hereby certify that this paper is being deposited on this date with the U.S. Postal Service as first class mail addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature: *David L. Vulpis* Date: October 17, 2008

Title: Methods and Systems for Dynamically
Configurable Load Balancing

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The remarks below are submitted in response to the Notification of Non-Compliant Appeal Brief dated September 17, 2008, in the above-identified application. The Appeal Brief at issue was filed June 30, 2008.

For the reasons identified herein, Applicants (hereinafter "Appellants") believe that the Notification of Non-Compliant Appeal Brief is improper and should be withdrawn, and that the June 30, 2008 Appeal Brief is in fact compliant with all relevant statutes and regulations.

REMARKS

In the Notification of Non-Compliant Appeal Brief, the Examiner appears to object to the June 30, 2008 Appeal Brief as failing to contain a concise explanation of each dependent claim that is argued separately. It is assumed that such is the basis for the objection since the summary of claimed subject matter in the June 30, 2008 Appeal Brief clearly contains a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, namely, independent claims 1, 17, 29, 30, 31 and 37.

The relevant regulation governing the summary of claimed subject matter in an Appeal Brief is 37 C.F.R. §41.37(c)(1)(v), which provides as follows with emphasis supplied:

(v) Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The Examiner appears to be objecting to the summary with regard to the separately-argued dependent claims apparently relies on the second sentence of 37 C.F.R. §41.37(c)(1)(v), containing the underlined portion above. However, it is clear that this sentence as applied to separately-argued dependent claims only requires that every means plus function and step plus function be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. None of the separately-argued dependent claims include any means plus function or step plus function

recitations. Accordingly, Appellants respectfully submit that the summary of claimed subject matter need not, and should not, include a summary of the separately-argued dependent claims or of any other dependent claim of the present application, none of which include any means plus function or step plus function recitations.

Accordingly, Appellants submit that the summary provided in the June 30, 2008 Appeal Brief is proper and fully compliant with 37 C.F.R. §41.37(c)(1)(v).

The Notification of Non-Compliant Appeal Brief is therefore believed to have been issued in error, and should be withdrawn.

Date: October 17, 2008

Respectfully submitted,



William E. Lewis
Attorney for Applicant(s)
Reg. No. 39,274
Ryan, Mason & Lewis, LLP
90 Forest Avenue
Locust Valley, NY 11560
(516) 759-2946